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District Attorney Suzanne Valdez's Statement on State of Kansas vs. Carrody Buchhorn, Case No. 2017-CR-385

Ollie Ortiz died tragically. Perhaps equally tragic is the fact that nothing in our criminal justice system can return Ollie to his loved ones.

Prior to taking office on January 11, 2021, I was generally aware of this case, but I had no access to the file or authority to act prior to being sworn in as Douglas County District Attorney. When I took office, Carrody Buchhorn had already been convicted of Murder in the Second Degree and her appeal was pending.

The following is a brief timeline of key events in the case, which tragically began more than six years ago:

- **September 29, 2016:** Ollie became unresponsive while at Sunshine Kids Group Daycare in Eudora, Kansas. Despite lifesaving efforts, Ollie was pronounced deceased upon his arrival at Lawrence Memorial Hospital.
- **September 30, 2016:** Dr. Erik Mitchell of Frontier Forensics Midwest, LLC performed an autopsy on Ollie.
- **April 14, 2017:** Following a thorough, multi-agency investigation, the Eudora Police Department submitted a probable cause affidavit alleging Carrody Buchhorn was responsible for Ollie's death. That same day, the Douglas County District Attorney Charles Branson's office formally charged Ms. Buchhorn with Murder in the First Degree, and in the alternative Murder in the Second Degree.
- **July 16, 2018:** The jury trial in this matter commenced.

- **July 24, 2018:** Jury deliberations began.
- **July 26, 2018:** The jury found Ms. Buchhorn guilty of Murder in the Second Degree.
- **November 18, 2019:** Following extensive post-trial litigation, Judge Sally Pokorny sentenced Ms. Buchhorn to 123 months in the Kansas Department of Corrections for her conviction of Murder in the Second Degree of Ollie. That same day, Ms. Buchhorn's counsel filed a notice of appeal on her behalf.
- **July 8, 2020:** Ms. Buchhorn filed her brief with the Court of Appeals of Kansas.
- **November 9, 2020:** The State filed its brief with the Court of Appeals of Kansas.
- **November 23, 2020:** Ms. Buchhorn filed her reply brief with the Court of Appeals of Kansas.
- **June 17, 2021:** A panel of the Court of Appeals of Kansas heard oral arguments.
- **August 13, 2021:** The Court of Appeals of Kansas issued an unpublished opinion, reversing Ms. Buchhorn's conviction and remanding the case back to district court for further proceedings.
- **September 7, 2021:** The State petitioned the Kansas Supreme Court to review the Court of Appeals opinion.
- **September 17, 2021:** Ms. Buchhorn filed her response to the State's petition for review, as well as her own conditional cross-petition for review.
- **November 24, 2021:** The Kansas Supreme Court granted the petition and cross-petition for review.
- **December 22, 2021:** Both the State and Ms. Buchhorn filed supplemental briefs with the Kansas Supreme Court.
- **January 21, 2022:** Both the State and Ms. Buchhorn filed responses to each other's supplemental briefs with the Kansas Supreme Court.
- **February 4, 2022:** Ms. Buchhorn filed her reply to the State's response brief.
- **March 30, 2022:** The Kansas Supreme Court heard oral arguments.
- **August 19, 2022:** The State sought a ruling upholding Ms. Buchhorn's conviction. The Kansas Supreme Court released a published opinion, denying the relief requested by the State. The Kansas Supreme Court was equally divided, three justices in favor and three opposed. Due to a recusal, the even split meant that the Court of Appeals opinion would stand.

- **September 2, 2022:** The State motioned the Kansas Supreme Court for either a modification or rehearing in the matter, potentially designating a seventh justice for purposes of resolving the split decision.
- **September 9, 2022:** Ms. Buchhorn filed her response in opposition to the State's motion.
- **September 12, 2022:** The State filed its reply to Ms. Buchhorn's response.
- **September 23, 2022:** The Kansas Supreme Court issued an order denying the State's motion for modification or rehearing.
- **October 5, 2022:** Though the Kansas Supreme Court's mandate had not yet issued, the district court conducted a scheduling conference in this matter for Ms. Buchhorn's potential retrial. The State informed the court that it would not rely upon Dr. Mitchell's testimony at the retrial, and was in the process of obtaining new expert witnesses. The State was given a deadline of December 16, 2022 to provide expert reports.
- **November 1, 2022:** The Court granted Ms. Buchhorn's request for a new preliminary hearing given that the State elected to no longer rely upon Dr. Mitchell's testimony. The preliminary hearing had already been tentatively scheduled for January 17, 2023.
- **November 10, 2022:** The Kansas Supreme Court's mandate was filed in the district court, officially reinstating the district court proceedings.
- **December 2, 2022:** The State informed the Court and defense that it had retained new experts and anticipated receiving the reports by December 16, 2022.
- **December 15, 2022:** The State received a report from its retained child abuse expert. The State forwarded the report to the defense. In part, the child abuse expert found Ollie to be "a victim of child physical abuse resulting in injuries that ultimately led to his death." The child abuse expert further found that "these injuries are the result of forces above and beyond routine care and handling that any reasonable caregiver should have recognized as excessive."
- Following close of business on **December 15, 2022**, the State received word from its retained forensic pathologist that she would need an additional two weeks to complete her report due the volume of materials she reviewed in conjunction with this matter. The State immediately notified the defense.
- **December 16, 2022:** The State filed a motion for an extension of time to submit the expert report of its retained forensic pathologist. The court, on its own motion, dismissed the State's case against Ms. Buchhorn. The State promptly filed its notice of appeal from the dismissal.

- **January 3, 2023:** The State received the expert report from its retained forensic pathologist.

I want to emphasize that since I took office, the State has been extremely engaged and acted in a highly diligent manner in handling this case. In addition to myself, the case has been reviewed by multiple attorneys in this office with extensive experience in both appellate and trial litigation. Additionally, I sought review of case materials from another District Attorney's Office as well as assistance from the Office of the Kansas Attorney General.

To be clear, the Kansas Supreme Court did not issue its final order in this matter until September 23, 2022. The Kansas Supreme Court's mandate was not filed in the district court until November 10, 2022. Nearly every criminal case that results in a conviction at the conclusion of a jury trial is appealed. While those matters are being considered by the appellate courts, it is highly uncommon that preparation for potential district court litigation would occur, as no one knows how the appellate courts will rule until those rulings are issued.

That said, the State began searching for potential experts prior to when the appellate proceedings were final. Importantly, the county – not the District Attorney's Office – determines what coroner to contract with. Here, the District Attorney's Office believed it would be prudent to contract with independent experts.

As I campaigned for this office, my core message was "Setting a Higher Standard." That applies to myself, everyone in my office, law enforcement partners, and any expert witnesses we may call to testify. For reasons fully chronicled in both local and national media, Dr. Erik Mitchell does not meet that standard. During my time in office, Dr. Mitchell has not been called to testify at a single hearing or trial.

I want to be clear that no court has barred Dr. Mitchell from testifying in this matter, nor has any of his prior testimony in this case been stricken. As a matter of prosecutorial discretion, I chose not to use Dr. Mitchell as a witness of any sort due to his questionable professional reputation. He contracted with Douglas County to serve as coroner prior to my administration. Dr. Mitchell was not hired by the District Attorney's Office.

Highly summarized, the 11-page report of the forensic pathologist concludes that, "It is my opinion, held within a ***reasonable degree of medical certainty***, that Oliver Ortiz died from natural disease and pathophysiologic processes unrelated to child abuse."

In the interest of justice, my administration aggressively litigated this matter to the extent of our abilities despite unfavorable rulings in the district court, the Court of Appeals, and the Kansas Supreme Court. Until we received the report from our retained forensic pathologist, we had no reason to doubt that we had sufficient evidence to proceed with the retrial of Ms. Buchhorn. After all, she was convicted by a jury of her peers in 2018 and none of the evidence produced at that trial had been ruled inadmissible at her retrial. The new trial was not ordered due to any act or omission by the State.

Upon receipt and review of the forensic pathologist's report dated January 3, 2023 and having conferred with other attorneys in this office, I have concluded that at this time, we do not have sufficient evidence to proceed with the prosecution of Ms. Buchhorn.

While there are conflicting findings between the State's two retained experts, as well as other evidence to support prosecution, we do not believe the evidence is likely to meet our burden of proving guilt beyond a reasonable doubt. Again, my campaign mantra was "Setting a Higher Standard."

The decision to cease prosecution of this matter is not one that I have made lightly, nor should it in any way reflect negatively upon the law enforcement agencies involved. First responders did their best to resuscitate Ollie, and their efforts are admirable. Lawrence Douglas County Fire and Medical personnel rushed Ollie to Lawrence Memorial Hospital. The dedicated law enforcement officers of the Eudora Police Department investigated the matter with assistance from the Lawrence Police Department, the Douglas County Sheriff's Office, and the Kansas Bureau of Investigation.

If there is any consolation to be had by those who mourn the loss of Ollie, it can be found in the fact that many trained professionals worked tirelessly to pursue justice, and Ollie will never be forgotten.

Suzanne Valdez
Douglas County District Attorney

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